

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT HENRY DEMEYER and DEPARTMENT OF THE AIR FORCE,
TACTICAL AIR COMMAND, BEALE AIR FORCE BASE, CA

*Docket No. 98-1066; Submitted on the Record;
Issued October 14, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has a ratable hearing loss causally related to factors of his federal employment.

The Board has duly reviewed the evidence contained in the case record presented on appeal and finds that appellant does not have a ratable hearing loss causally related to factors of his federal employment.¹

The schedule award provisions of the Federal Employees' Compensation Act² sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.³ To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.⁴

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged. Then a "fence" of 25

¹ On November 7, 1997 the Office of Workers' Compensation Programs issued a decision accepting appellant's claim for an employment-related hearing loss; but finding this hearing loss to have demonstrated a nonratable or noncompensable hearing loss in either ear. This decision is appealed to the Board.

² 5 U.S.C. § 8107.

³ *Daniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Henry L. King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions.⁵ The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss and the total is divided by six, to arrive at the amount of the binaural hearing loss.⁶ The Board has concurred in the Office's adoption of this standard for evaluating hearing losses.⁷

The district medical adviser correctly applied the Office's standard procedures to the May 2, 1997 audiogram obtained by Dr. Stuart Gherini, a Board-certified otolaryngologist to whom the Office referred appellant. The district medical adviser also agreed with Dr. Gherini's medical diagnosis which revealed that appellant had bilateral moderately severe, noise-induced, high frequency sensorineural hearing loss and bilateral tinnitus causally related to his employment-related noise exposure.⁸

Testing for the right ear at the relevant frequencies revealed decibel losses of 15, 10, 10 and 40 for a total of 75, which was divided by 4 for an average hearing loss of 18.75 decibels; the average was reduced by the fence of 25 (the first 25 decibels were discounted as discussed above) to arrive at 0 or a nonratable loss of hearing in the right ear.⁹ The hearing loss in the right ear was nonratable under these standards and, therefore, noncompensable.

Testing for the left ear at the same frequencies revealed decibel losses of 15, 10, 15 and 50 decibels respectively for a total of 90. This figure was divided by 4, for an average hearing loss of 22.5 decibels; the average was reduced by the fence of 25 (the first 25 decibels were discounted) to arrive at 0 or a nonratable loss of hearing in the left ear.¹⁰ The hearing loss in the left ear was nonratable under these standards and, therefore, noncompensable.

⁵ The A.M.A., *Guides* points out that the losses below an average of 25 decibels is deducted as it does not result in impairment in the ability to hear everyday sounds under everyday listening conditions; see A.M.A., *Guides* 224 (4th ed. 1993); see also *Kenneth T. Esther*, 25 ECAB 335; *Terry A. Wethington*, 25 ECAB 247.

⁶ FECA Program Memorandum No. 272 (issued February 24, 1986).

⁷ *Danniel C. Goings*, *supra* note 3.

⁸ The Office had accepted that appellant sustained an employment-related hearing loss in both ears due to noise exposure.

⁹ See A.M.A., *Guides* 224 (4th ed. 1993).

¹⁰ *Id.*

The decision of the Office of Workers' Compensation Programs dated November 7, 1997 is affirmed.

Dated, Washington, D.C.
October 14, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member